

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 06-546 PJH

v.

CHUKA OGELE,

ORDER DENYING MOTION FOR EARLY TERMINATION OF SUPERVISED RELEASE

Defendant.

13 Before the court is the motion of defendant Chuka Ogele for early termination of
14 supervised release pursuant to 18 U.S.C. § 3582(e) and Federal Rule of Criminal
15 Procedure 32.1(c). Doc. no. 110. Defendant brings the motion on the ground that he is in
16 financial and personal difficulty and would be able to make a reasonable living if permitted
17 to return to his native country, Nigeria. Defendant also requests a hearing to present
18 additional reasons for early termination. The government opposes the motion for early
19 termination. Defendant's motion to terminate supervised release is DENIED for the
20 reasons set forth below.

BACKGROUND

On September 14, 2007, defendant entered a guilty plea on the following counts:

- a. Possession of controlled substances with intent to distribute in violation of 21 U.S.C. § 841(a)(1) (Count One);
 - b. Possession of controlled substances in violation of 21 U.S.C. § 841(a)(1) (Count Three);
 - c. Conspiracy to distribute controlled substances in violation of 21 U.S.C. § 846 (Count Four)

- d. Travel in interstate commerce to promote unlawful activity and use of facility in interstate commerce to distribute proceeds of unlawful activity in violation of 18 U.S.C. §§ 1952 and 2 (Count Six);
 - e. Money laundering in violation of 18 U.S.C. § 1956 (Counts Twenty-Two and Twenty-Three);
 - f. Conspiracy to engage in and attempt to engage in monetary transactions with criminally deprived property in violation of 18 U.S.C. §§ 1957 and 371 (Count Thirty-Seven).

Docket No. 67 ¶ 1 (Plea Agreement).

10 Defendant was a licensed vocational nurse and formed a non-profit organization
11 called International Surplus Medical Products (ISMP) in 1997, with the stated purpose of
12 delivering medication and medical supplies to Nigeria. Docket No. 71 (Def. Sentencing
13 Memo.). Upon entering his guilty plea, defendant admitted that he falsely represented
14 himself to be a medical doctor and fraudulently used the medical license of ISMP's medical
15 director to purchase controlled substances with the intention of distributing these
16 substances to other persons. *Id.* ¶ 2(a). Defendant hired a co-conspirator to sell these
17 controlled substances in the area of Oakland, California, and planned with others to
18 transport the drugs to Houston, Texas for distribution. *Id.* ¶¶ 2(b) - (d). Defendant further
19 admitted that he used funds from the unlawful sale of drugs to buy more drugs with the
20 intent to promote the unlawful distribution of controlled substances, and that he intended to
21 purchase a home for \$1.3 million in cash with the proceeds of the unlawful sales. *Id.* ¶ 2(e)
22 and (f).

23 Defendant was sentenced to 37 months imprisonment, three years supervised
24 release, \$700 in special assessments, and \$373,128.09 in restitution. Docket No. 105
25 (Judgment). Defendant was released from custody on March 11, 2011, and has completed
26 more than one year of his supervised release term.

LEGAL STANDARD

²⁸ Early termination of supervised release is governed by 18 U.S.C. § 3583(e).

1 which requires the court to consider factors set forth in §§ 3553(a)(1), (a)(2)(B), (a)(2)(C),
2 (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7). Those factors “include the nature and
3 circumstances of the offense, the need for deterrence, the need to protect the public, the
4 need to provide defendant with training or medical care, and the relevant provisions of the
5 Sentencing Guidelines.” *United States v. Gross*, 307 F.3d 1043, 1044 (9th Cir. 2002).
6 After considering those § 3553(a) factors, the court may “terminate a term of supervised
7 release and discharge the defendant released at any time after the expiration of one year of
8 supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure
9 relating to the modification of probation, if it is satisfied that such action is warranted by the
10 conduct of the defendant released and the interest of justice.” 18 U.S.C. § 3583(e)(1).

11 DISCUSSION

12 Defendant seeks early termination of supervised release on the ground that gainful
13 employment has been made difficult by his conviction and the moribund economy.
14 Defendant contends that he would be able to rekindle his business relationships in Nigeria
15 and make a reasonable living if permitted to return there. Defendant offers no details of
16 prospective business opportunities to support this contention, nor does he explain why
17 fulfilling his term of supervised release would inhibit his ability to make a reasonable living.

18 Looking first to the nature and circumstances of the offense and defendant’s history
19 and characteristics pursuant to § 3553(a)(1), the court does not find support for early
20 termination of supervised release. At sentencing, defendant denied that he misled doctors
21 and other professionals into believing that ISMP was a legitimate charity and that ISMP
22 was a sham operation for purchasing narcotics for the purpose of conducting street-level
23 drug sales. Docket No. 71 at 2. However, defendant admitted that he engaged in
24 deceptive conduct to obtain controlled substances with the intent of illegally distributing
25 drugs in Oakland and Houston, by falsely representing that he was a medical doctor and
26 fraudulently using the medical license of a doctor associated with ISMP. From July 2002 to
27 September 2004, defendant bought large quantities of Schedule III controlled substances
28 such as hydrocodone and acetamin with codeine, as well as Schedule V controlled

1 substances containing codeine. Docket No. 67 ¶ 2(a). He admitted to obtaining controlled
2 substances worth over one million dollars during that period. *Id.* At defendant's direction,
3 the controlled substances were delivered to ISMP's offices. *Id.* Defendant admitted that on
4 a trip to Houston, he obtained \$975,381 in cash, which he knew was derived from the sale
5 of controlled substances. Docket No. 67 ¶ 2(f)(7).

6 At sentencing, defendant requested a downward departure from the Guidelines
7 sentencing range. Docket No. 71. The court found an offense level of 21, leading to a
8 Guidelines range of 37-46 months, and sentenced defendant to 37 months in custody,
9 denying his request for downward departure. Docket No. 86. The court sentenced
10 defendant to three years of supervised release under special conditions as well as the
11 usual terms and conditions. *Id.*

12 Having considered the need to afford adequate deterrence to the distribution of
13 controlled substances, the need to protect the public from further crimes of defendant, the
14 Guidelines sentencing range established for applicable offense category, and the need to
15 avoid unwarranted sentence disparities, the court finds that defendant has failed to show
16 that his speculative access to resources in Nigeria warrants early termination of supervised
17 release. 18 U.S.C. §§ 3553(a)(2)(B), (a)(2)(C), (a)(4), (a)(6). Defendant does not contend
18 that either the need to provide him with necessary training or medical care, or a policy
19 statement of the Sentencing Commission, warrants early termination pursuant to
20 § 3553(a)(2)(D) or (a)(5).

21 Pursuant to § 3553(a)(7), the court also considers the need to provide restitution,
22 which the court found in the amount of over \$370,000 for money owed to Priority
23 Healthcare for goods and pharmaceuticals that defendant did not pay for after obtaining
24 them. Docket No. 104. Defendant points out that he still faces a staggering restitution
25 obligation, but does not demonstrate how early termination of supervised release would
26 help him fulfill that obligation.

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1 Defendant fails to show any compelling ground for terminating his supervised
2 release, and the motion for early termination of supervised release is therefore DENIED.
3 No modification to the terms or conditions of supervised release is made.

4 Defendant's request for a hearing on his motion for early termination of supervised
5 release is DENIED in view of the court's unavailability between December 6 and January 1,
6 and because no hearing is needed. However, if defendant wishes to present additional
7 reasons for the court's re-consideration, he must do so by filing an affidavit in support of a
8 written motion which the court will consider in January.

9 IT IS SO ORDERED.

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11 Dated: December 4, 2012

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PHYLLIS J. HAMILTON
United States District Judge

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